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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,999	12/07/2001	John D. Dobak III	2050/1 D1	5765

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EXAMINER

ISABELLA, DAVID J

ART UNIT PAPER NUMBER

3738

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,999

Applicant(s)

DOBAK, JOHN D.

Examiner

DAVID J ISABELLA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4 6) ☐ Other:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd, et al (5799661) in view of Ginsburg (5837003).

Boyd et al discloses a coronary bypass procedure comprising the steps of cooling the body of a patient to less than 35 degrees C using a heat transfer element. Boyd forms a fluid communicating graft between the blood supply and the coronary artery and the patient's blood is oxygenated in the patient's lungs by the patient's heart or intracorporeal pump.

The heat exchanger of Boyd et al is a topical device. Ginsburg teaches a method and apparatus for controlling body temperature in situ with a heat exchanger designed to be inserted into a blood vessel of a patient. To control the body temperature of a patient undergoing coronary bypass procedure by using a heat exchanger designed for insertion into the blood vessel of the patient as taught by Ginsburg; instead of the topical exchanger thereby avoiding the problems of thermal shock to the myocardial tissues would have been obvious to one with ordinary skill in the art at the time of the invention thereof.

Claim 2, see column 4 of Ginsburg.

Claim 3, see column 1, lines 28+ of Ginsburg.

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Claims 4-9, see columns 9 & 10 of Boyd, et al.

Claim 10 see column 4 of Ginsburg.

Claims 11-17 are directed to method steps for arresting the heart or placement of the heat exchanger. The use of chemicals and electrical charge in arresting and/or stimulating the heart is well known in the art and the single use or the combination of electrical charge and chemicals in stopping or starting the beat of the heart do not form the basis of this invention. The placement of the heat exchanger in a venous vasculature (eg vena cava or vein) would have been obvious to one with ordinary skill in the art based upon surgical considerations. See column 5-6 of Ginsburg.

Claim 18, see column 5, lines 58+ of Ginsburg.

Claims 19-22 see figures 5 and 11 of Ginsburg.

Claim 23, see columns 7-8 of Boyd et al.

Claim 24, see column 1, lines 28+ of Ginsburg.

Claim 25, see column 9, lines 40+ of Boyd, et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3580 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in black ink, appearing to read 'David J. Isabella', with a stylized flourish at the end.

DAVID J ISABELLA
Primary Examiner
Art Unit 3738

dji
June 26, 2003